STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 10, 2014
v	No. 309481 Jackson Circuit Court
ADAM BENJAMIN STEVENS, Defendant-Appellant.	LC No. 10-005622-FC

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

SERVITTO, J. (*dissenting*).

I respectfully dissent. Because the trial court's questioning of defendant's expert witness unquestionably evidenced partiality that most likely influenced the jury to defendant's detriment, thereby denying defendant a fair trial, I would reverse defendant's convictions and remand for a new trial.

MRE 614(b) provides that "[t]he court may interrogate witnesses, whether called by itself or by a party." But there are long-recognized constraints to the court's questioning. "As long as the questions would be appropriate if asked by either party and, further, do not give the appearance of partiality . . . a trial court is free to ask questions of witnesses that assist in the search for truth." *People v Davis*, 216 Mich App 47, 52; 549 NW2d 1 (1996). The trial court also cannot ask questions that are intimidating, argumentative, unfair or partial. *People v Conley*, 270 Mich App 301, 308; 715 NW2d 377 (2006). It must ensure that the judicial veil of impartiality remains intact. To determine whether the court pierced the veil of impartiality, we look to whether the court's questions "were of such a nature as to unduly influence the jury and thereby deprive the appellant of his right to a fair and impartial trial." *Conley*, 270 Mich App 301, 308; 715 NW2d 377 (2006)(citations omitted). In making this determination, we consider whether the "judge's questions and comments *may* well have unjustifiably aroused suspicion in the mind of the jury as to a witness' credibility, . . . and whether partiality *quite possibly could* have influenced the jury to the detriment of defendant's case." *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986)(internal citation and quotations omitted; emphasis in original). If the trial court's conduct pierced the veil of judicial impartiality, the defendant's conviction must be reversed. *Conley*, 270 Mich App at 308.

The prosecution's theory of this case was that defendant acted with malice in causing the head trauma that ultimately caused the child's death. As indicated by the majority, defendant's

primary defense was that while carrying the child, he tripped and fell, dropping the child to the floor and that the fall caused the head trauma leading to his death. Because no one observed defendant's interaction with the child in the time immediately leading up to the child's death, expert testimony concerning the possible cause or causes of the head trauma was of paramount importance in this case, as was the credibility of the expert witnesses providing such testimony.

Defendant presented the testimony of a forensic pathologist, Dr. Shuman, to establish (among other things) that the head trauma suffered by the child could have been caused by a fall such as that described by defendant and that the child did not have the specific type of injuries that would be present in babies that were shaken to death. I agree with defendant that the trial judge engaged in several inappropriate exchanges with Dr. Shuman that, in sum, pierced the veil of impartiality and deprived defendant of a fair trial. The majority briefly summarizes the exchanges and summarily concludes that all of the challenged questioning by the trial court "merely" and appropriately addressed Dr. Shuman's experience as a medical examiner and the type of methodologies he used in preparing his reports. Due to the context of the questions and the language employed by the trial judge, I find it important to relate the precise questions posed to Dr. Shuman by the trial court in order to highlight why I feel they not only crossed the line of judicial impartiality but may well have influenced the jury to the detriment of defendant's case.

First, while Dr. Shuman was testifying on direct examination about the differences between an adult and an infant's brain, he stated:

> The brain in adults and in children is enclosed in the skull and it's surrounded by fluid, cerebral spinal fluid, so it's kinda floating in there, you know? I think you heard testimony that the brain sloshes around. The brain doesn't slosh around. It would be like trying to scramble an egg by shaking it. It doesn't—that doesn't work because of the –the way it's configured.
>
> When you rotate the brain you can get differential motion between the head and the brain because of the rotation and that can cause tearing of vessels and things like that, but the brain's not sloshing around like—like scrambling an egg or anything.

The trial court then asked:

	Would you be surprised if I told you that an expert didn't testify in this case that [an] infant's brain was sloshing around like an egg?
Dr. Shuman:	I saw Dr. Mohr's testimony, she said the brain sloshed around.
Court:	Okay, so you think because one pediatrician said that, that that's—that that's just your opinion, correct?
Dr. Shuman:	I'm just trying to educate the jury on that's not how it works.

Court:	Okay. And now, you would agree with me that other pathologists might have very different views than your—(inaudible)—correct? Or incorrect? Do you think that there's other doctors that might have different views of the vulnerability of the child's brain versus an adult brain, or would you say that there's a consensus in the medical community?
Dr. Shuman:	Well, I think there's—there's people who may disagree with that. I think that the—the main issue is, is the infant is much more susceptible to impact injury.
Court:	I have another question for you. Have you ever traveled so far to testify?
Dr. Shuman:	Yes.
Court:	Okay, how often and how far did you go?
Dr. Shuman:	Well, I've testified in—
Defense counsel:	Your honor, may we approach?
Court:	No, Mr. Kirkpatrick, you may not.
Defense counsel:	Well, your Honor, just for the record, I believe that that particular question is inappropriate. I –it's clear that this is a court-appointed medical examiner. The fact that he traveled from Florida to Michigan has absolutely no bearing in this case. But certainly, Doctor, you can—
Court:	Your exception's noted, Mr. Kirkpatrick.

The trial court's above questioning is troublesome for several reasons. First, the trial court is asking defendant's expert if he is aware of testimony from another witness and is essentially challenging Dr. Shuman's testimony by suggesting that another witness did not testify as Dr. Shuman was indicating. Second, the trial judge somewhat misstated Dr. Shuman's testimony by asking if he would be surprised that no expert testified that the brain sloshes around like an egg. Dr. Shuman did not attribute the "sloshing around" testimony to anyone in particular, let alone an expert, but instead simply indicated that he thought the jury may have heard that type of testimony. And, Dr. Shuman did not attribute a statement concerning the likeness of the brain to an egg to anyone. He was, in fact, the one, who stated it was "not like scrambling an egg."

Additionally, by asking Dr. Shuman "that's just your opinion, correct?" and asking, "you would agree with me that other pathologists might have very different views than your—(inaudible)—correct?" the trial judge is suggesting that Dr. Shuman's opinion is not necessarily one to be trusted. Moreover, by employing certain phrases, i.e., "you would agree with me," the questioning suggests that the trial judge has an opinion and is seeking Dr. Shuman's concurrence with his opinion.

Finally, by asking Dr. Shuman if he has ever had to come this far to testify before, the trial court arouses suspicion that to do so is unusual. And, how far Dr. Shuman traveled is irrelevant to the material facts.[1] These questions may well have unjustifiably aroused suspicion in the mind of the jury as to Dr. Shuman's credibility and to the judge's partiality and quite possibly could have influenced the jury to the detriment of defendant's case. *Sterling*, 154 Mich App 228.

Just a few sentences later, the trial court again posed improper questions to Dr. Shuman:

Defense Counsel:	How many medical examiners are there that would be qualified to testify on these particular issues to your knowledge?
Dr. Shuman:	There's only about four or five hundred full-time practicing forensic pathologists in the country. And very few of them are willing to do any work outside of their normal work and some of them are not allowed to.
Defense Counsel:	So you have to have special training and qualifications to be able to come into court and testify, is that—
Dr. Shuman:	Yes.
Defense Counsel:	--a fair statement?
Dr. Shuman:	Yes.
Court:	But, Dr. Shuman, as I understand it, you're an assistant pathologist, correct, you're not—not the pathologist at Dade County are you?

[1] The majority points out that the trial court also questioned the prosecution's expert witness pathologist, Dr. Jentzen, about how far he has traveled to testify before. However, this information was not elicited until he was called as a rebuttal witness, after defendant lodged a vigorous objection to how his expert was being questioned, and to that question in particular.

Dr. Shuman:	That's correct. We have—we have a district medical examiner, that's Dr. Hyma, my boss, and he appoints associates.
Court:	Okay, well how—how many associate pathologists are there in Dade County?
Dr. Shuman:	Right now there are four others.
Court:	Would—would you consider any of your associate pathologists in—not qualified to testify in any of the courts that they work in Dade County—
Defense Counsel:	Your Honor, I guess my objection to, my question to the Court is, this Court has endorsed this witness as an expert.
Court:	I understand—
Defense counsel:	Clearly—
Court:	but—but—
Defense Counsel:	--the prosecution had an opportunity to voir dire—
Court:	--Mr. Kirkpatrick—Mr. Kirkpatrick, if I have a question I can ask a question, all right?
Court:	So-so, Dr. Shuman, are there any of the assistant pathologists that you work with that you would consider unqualified to testify in the fields of forensic pathology?
Dr. Shuman:	No.
Court:	Are there any assistant pathologists, as an example, that you think work in Detroit, Flint, Saginaw as far as you know that would be unqualified to testify?
Dr. Shuman:	Not unqualified but maybe not willing.
Court:	Okay, and all things being equal do you think a head pathologist is more qualified to testify by way of experience or do you think an assistant pathologist is more qualified to testify by way of experience?

Dr. Shuman:	I—I wouldn't make that determination based on just being a head versus an assistant.
Court: Okay.	All things being equal, would you agree with me that—that generally head pathologists reach the top of their profession because they have the most experience or the least experience?
Dr. Shuman:	Well no, no. I mean, it—I know pathologists that are head pathologists that have less experience than I do.
Court:	Okay, does your head pathologist of Dade County have more or less experience than you do?
Dr. Shuman:	He has more.
Court:	He has what?
Dr. Shuman:	He has more but I've trained pathologists who are head pathologists in other areas.

Plaintiff's expert had already testified he is the head medical examiner in Washtenaw County. The above exchange paints a picture of a trial judge attempting to discredit the qualifications of defendant's expert witness and further drawing an inference that defendant had to go all the way to Florida to find an expert willing to testify on his behalf.

There is no reason for the trial court, after having already endorsed Dr. Shuman as an expert witness, to point out that he is an associate pathologist rather than a head pathologist or medical examiner and then insinuate that head pathologists reach the top of their profession due to experience. The negative language employed in the trial court's questioning (e.g., you're not the pathologist at Dade County are you?) coupled with the follow up questions concerning experience gives the appearance that the trial judge views an assistant pathologist such as Dr. Shuman as less qualified to give an opinion than a head pathologist or medical examiner such as plaintiff's expert.

The trial court also had no reason to ask if Dr. Shuman believed that there were any assistant pathologists that work in Detroit, Flint, Saginaw (i.e., the surrounding areas) that were unqualified to testify. The trial judge was not clarifying any confusing testimony or attending to any as yet unanswered questions, particularly where this exchange took place during direct examination of Dr. Shuman by defense counsel and the prosecution still had its opportunity to clarify testimony or elicit any testimony on cross-examination that it felt necessary. The trial court was also not eliciting any additional information that made the existence of any fact that was of consequence to the determination of the action more or less probable. MRE 401. And, again, the trial court indicates an opinion through its use of the words, "would you agree with me . . ." preceding certain questions. These questions may well have unjustifiably aroused suspicion in the mind of the jury as to Dr. Shuman's credibility and to the judge's partiality and quite

possibly could have influenced the jury to the detriment of defendant's case. *Sterling*, 154 Mich App 228.

Another exchange between the trial court and Dr. Shuman challenged by defendant on appeal took place after Dr. Shuman was asked by defense counsel on direct examination to explain the history of shaken baby syndrome, its evolution, and its current status. During his testimony, Dr. Shuman testified that a recent study measuring the accelerations of a 12-month-old surrogate's head when shaken vigorously and those of a seven-month-old baby bouncing in a bouncy chair found the accelerations to be very similar. While the trial court's questioning in this regard did not necessarily give an appearance of partiality nor was it as argumentative as other exchanges, it is notable that immediately after the exchange, the jury was excused and defense counsel placed an objection on the record. Counsel stated that the trial court's questioning of Dr. Shuman was objectionable because it was cross-examining the witness as though it was the prosecuting attorney and was sending a message to the jury that they should disregard what the witness was saying. Counsel stated that if he was getting that feeling, the jury was also likely getting that feeling. Defense counsel also noted that ". . . just a problem too because the record doesn't accurately---accurately reflect, but I believe the manner in which you are asking them, the voice in which you're asking them, the tone in which you're asking them, and the way you're looking at him when you ask him those questions is giving a projection that you have—you're taking issue and exception to his testimony." That defense counsel found it necessary to place on the record an objection as to the trial judge's demeanor while questioning Dr. Shuman is of considerable worth.

Defendant argues on appeal that several more instances of the trial court's questioning of Dr. Shuman were inappropriate, though admittedly no contemporaneous objections to these questions were made.[2] For example, the trial court asked Dr. Shuman, during his direct examination, if part of any autopsy involved looking at all of the investigative reports and, if in fact they were as critical as the physical autopsy itself. Dr. Shuman responded that they could be as critical. Then, during Dr. Shuman's cross-examination, after the prosecution asked Dr. Shuman if he looked at or was supplied with the police reports in the child's case and he responded in the negative, but indicated that he had in cases where he had personally conducted the autopsies, the trial court asked:

> Why didn't you do that in this case then? Why didn't you ask to get the police reports or to talk with the Detective Boulter? If that was important in that short fall case--that case that you did why didn't you do it in this one?

[2] It would appear that objection would have been futile in any instance, given the trial court's statement to defense counsel upon objection made that "the Court can ask certain questions, as you well know Mr. Kirkpatrick" and that it did not feel that any of its questions were inappropriate.

Dr. Shuman: Well, I generally don't, you know, have the opportunity to speak to detectives in cases that I'm consulted in. I—it I had more time I would have requested some of the, you know, police reports and things like that too.

Court: Well let me ask you this question, you said that the majority of—huge—a large percentage of the time you testify for prosecutors, correct?

Dr. Shuman: Yes.

Court: And wouldn't you have access to the police reports in those cases?

Dr. Shuman: Yes.

Court: I mean, is it any–when you're going to rule out any suspicious death isn't looking at the police reports a critical part of determining the forensic aspect of pathology?

Dr. Shuman: Yes. We've discussed it. The circumstances are very important in determining what happened, yes.

And then:

Court: Doctor, I've got a question. Many of these other homicides that you testified, would it be fair to say a lot of times that you looked at the police reports sometimes you got other supplemental reports and you looked at all the reports that were made in the case as part of your forensic evaluation?

Dr. Shuman: I'm sorry, I'm not sure I understand that question.

Court: Okay, well you—you've obviously testified a number of times for prosecutors, correct?

Dr. Shuman: Yes.

Court: And it would not be unusual for you to see the police reports, including supplemental reports? You know what a supplemental police report is?

Dr. Shuman: Yes.

Court: What's that?

Dr. Shuman:	It's a—well, usually there's a main police report, usually when the—when the information initially comes in and then there will be supplemental reports as they gather additional information.
Court:	And as—as a forensic and anatomical pathologist would you want to look at not only the main police reports but any supplemental police reports, as an example, of certain breaking developments in the investigation?
Dr. Shuman:	I generally try to get as much information as I can. In my—in my role as a medical examiner in Miami I rarely see those reports. I usually just talk to, you know, the detectives about it. In other cases I've testified in I do see them.

The initial question asked of Dr. Shuman on direct examination again suggests that Dr. Shuman's opinion is not trustworthy, according to the trial judge. The trial judge asking Dr. Shuman why he did not get police reports in this case, when it was important in his own case when a short fall death of a child was claimed, suggests Dr. Shuman did not do a thorough job. And, Dr. Shuman did not testify that it was "important" that he got the police report in his prior case; he simply testified that he received it. Again, too, the trial judge imparts his own opinion in the case by his phraseology "when you're going to rule out any suspicious death isn't looking at the police reports a critical part of determining the forensic aspect of pathology?" The trial judge suggests he knows the answer by the terms used in the question and is looking for the expert to agree with him rather than simply looking for the expert's own opinion. This question may well have unjustifiably aroused suspicion in the mind of the jury as to Dr. Shuman's credibility and to the judge's partiality and quite possibly could have influenced the jury to the detriment of defendant's case. *Sterling,* 154 Mich App 228.

I would also note that when the prosecution re-called its expert, Dr. Jentzen, as a rebuttal witness, the trial court engaged in a more avid questioning of this witness than it had during either the direct or cross-examination of Dr. Jentzen. However, the majority of the questioning appears to have been undertaken in a further effort to discredit Dr. Shuman and attack his testimony. For example, the trial court asked:

> Okay, Doctor, as a forensic pathologist, and I guess an anatomical one as well, why is it important [i]f a death is either suspicious or suspected to be a homicide, why is it important to you that you review the police reports and have access to the detective and access, as an example, to any supplemental breaking reports in the investigation?

Clearly this question, which had already been addressed, was intended to bring further attention to Dr. Shuman's admitted failure to obtain the police reports in this case.

The trial court also asked:

> . . . Doctor you're obviously the medical examiner of Washtenaw County, correct?
>
> Dr. Jentzen: Yes.
>
> Court: And how long were you an assistant medical examiner before you became the head medical—

The fact that Dr. Shuman was an assistant medical examiner rather than a head medical examiner was drawn out by the trial court. And, the trial court had previously attempted to have Dr. Shuman agree that a head medical examiner has more experience and, impliedly, is more qualified to testify by way of experience. The above question asked on rebuttal had no relevance as to any material question of fact and could only have been asked to highlight the trial court's prior questions concerning the experience of and the trial court's implied perceptions regarding the qualifications of the two experts with respect to their ability to offer reliable testimony. Both cited questions also improperly bolstered Dr. Jentzen's credibility and thus the credibility of the prosecution's case. See *Sterling*, 154 Mich App at 230 (finding that the questions posed by the trial court to a witness "may well have been interpreted as the court's seal of credibility" on the testimony of the witness).

Defendant also asserts that during his own testimony, after he testified that he had tripped over a toy truck on the floor and had dropped the child, the trial judge asked the following inappropriate questions of him:

> Court: Why did you pick this alleged truck up and not put it in the toy box, as I recall your testimony, was somewhere in the—in the bedroom you said you took it?
>
> Defense Counsel: Your Honor, I think he was talking about the marijuana that he took to the bedroom.
>
> Defendant: Yes.
>
> Court: Well let me restate it, then what happened to the truck that you allegedly tripped and lost your balance on?
>
> Defendant: I—I left it there. I didn't move it.
>
> Court: So you left it on the floor. Would it have been there when Detective Boulter came in and did a physical inspection?
>
> Defendant: I believe so, unless it was cleaned up beforehand, I don't know.

Defendant did not object to this line of questioning but challenges the trial court's use of the word "alleged" in questioning defendant. While the majority labels this choice of words "unfortunate" and notes that this was an isolated use of the word, I would also note that this is the *only* time the trial court elected to use the term when questioning any witness, although there were arguably assertions by other witnesses that would have warranted the same use of the word. Had this been the only indication of the trial judge's disbelief of defendant's version of the events, I would tend to agree with the majority that this isolated comment was insufficient to influence the jury. But that is unfortunately not the case.

Even without the benefit of observing the trial court's demeanor when questioning Dr. Shuman, I am convinced that defendant's claim of judicial interference and impartiality to the point of unduly influencing the jury and depriving him of a fair trial have considerable merit. Notably, most of the exchanges between the trial court and Dr. Shuman took place during direct examination by defense counsel—*prior to the prosecution ever having an opportunity to question him*. The questions were clearly aimed at attacking Dr. Shuman's credibility and were not asked in order to clarify any outstanding matters for the jury. And, of even more significant consideration, the first two challenged exchanges took place within the first 24 pages of Dr. Shuman's testimony on direct examination. The trial court engaged in nearly as much questioning of this witness as defense counsel did; thus, it would be difficult to imagine that the jury did not perceive the trial court's aggressive questioning of the witness as an indication of the witness's untrustworthiness or of some sort of disbelief on the trial court's part. This is especially so when one considers that at this point, the prosecution had already rested and the trial court had asked the expert pathologist presented by the prosecution (who had conducted the autopsy on the child) exactly *three* questions during his direct examination and *zero* questions during his cross-examination. The three questions asked were simple and innocuous in direct contrast to the critical and attacking questions asked of Dr. Shuman. The jury would not likely have missed the disparity in treatment or the difference in the nature of the questions asked between the two experts. While, as pointed out by the majority, the trial court asked questions of almost all of the witnesses during trial, the questions posed to other witnesses were few and far between in comparison to those posed to Dr. Shuman.

The trial court's excessive interference in the examination of, principally, defendant's expert witness, demonstrated partisanship. There is every indication that the court's questions were argumentative and that it assumed the role of the prosecutor in its questioning. "A trial court may not assume the prosecutor's role with advantages unavailable to the prosecution." *People v Weathersby*, 204 Mich App 98, 109; 514 NW2d 493 (1994). The trial court asked the vast majority of its attacking questions during direct examination of Dr. Shuman—long before the prosecutor even had an opportunity to assume its own role and undertake its responsibilities. The trial judge's questioning in this matter went far beyond piercing the veil of impartiality—the judge virtually shredded the veil. The error on the trial court's part was plain, and the trial court's conduct affected defendant's substantial rights, depriving him of a fair trial.

The majority premises its conclusion that defendant was not deprived of fair trial based upon the trial court's questions in part on the fact that the trial court instructed the jury as follows:

> My comments, rulings, questions and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law and to tell you the law—and to tell you that law that applies to this case. However, when I make a comment or give an instruction or ask a question, I am not trying to influence your vote or express a personal opinion about the case. If you believe I have an opinion about how you should decide this case you must pay no attention to that opinion. You are the only judges of the facts and you should decide this case from the evidence.

And later "I may and have asked some of the witnesses questions myself. These questions are not meant to reflect my opinion about the evidence. If I ask questions my only reason would be to ask about things that may not have been fully explored."

"Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). However, in this case, the instructions were insufficient to cure any prejudice. As indicated in *People v Wigfall*, 160 Mich App 765, 772; 408 NW2d 551, 554 (1987), "[t]he words and actions of a trial judge weigh heavily with a jury. Even inadvertent or thoughtless remarks by the trial judge may prove exceedingly prejudicial in a criminal trial."(citations omitted). The judge's questions in this case were argumentative, prejudicial and invaded the prosecutor's role with respect to defendant's key witness. Where the case was based almost exclusively on circumstantial evidence, and defendant's guilt or innocence hinged in large part on the jury's assessment of Dr. Shuman's credibility, the trial judge's conduct tainted the trial to the extent that a jury instruction constituted mere lip service and cannot be presumed to have cured the extent of the error. This is not a case like, for example, *Weathersby*, 204 Mich App 98, where although the trial judge's questioning crossed the line of judicial impartiality, reversal was not required because the error was found to be harmless.

In *Weathersby*, the witness at issue was a computer expert who had downloaded information stored on computers that had been seized from the defendant's residence pursuant to a warrant. The trial judge's questions inquired into matters that the prosecutor perhaps should have inquired into and essentially furthered the prosecution's case for it which, according to the Court, crossed the line of judicial impartiality. *Id*. at 109-110. Acknowledging that "[a]lthough partial comments or questions are only rarely innocuous" the *Weathersby* Court nevertheless found the facts before it

> to be precisely such a rare case for three reasons. . . . First, the credibility of a defense witness was not at issue here as it has been in many other cases involving improper questioning by a trial court. Second, the questions asked by the trial court revealed no partiality in themselves. Rather, it was solely the fact that they were asked in furtherance of the people's case that made them partial. Finally, the witness, in fact, already had provided most of the information included in her responses to the trial court's questions. Accordingly, we conclude that the trial court's questioning of the prosecution witness did not prejudice defendant or deprive him of his right to a fair trial. *Id*. at 109 (internal citations omitted).

Dr. Shuman was defendant's primary defense witness, and because no one witnessed the events leading to the child's death, the case amounted to an expert vs. expert credibility contest. The trial judge's questions of this witness, especially when viewed in comparison to his questions of all other witnesses (particularly plaintiff's pathologist) indicate that the judge was not "the neutral and detached magistrate of justice that any defendant is entitled to expect in a criminal trial." *People v Moore*, 161 Mich App 615, 619; 411 NW2d 797 (1987). In fact, the questions gave all appearance that the trial court did not believe defendant's version of the events and did not find defendant's witness to be credible. The information the trial court attempted to elicit was not information drawn out by the prosecution and expounded upon the trial court. It was initiated by the trial court in a manner that suggested the trial court was acting in the role as prosecutor.

This case is unquestionably tragic. But just as the trial court instructed the jury that it "must not let sympathy or prejudice influence your decision" the trial judge is also bound to not let sympathy, prejudice, or any other outside factor cloud his duty to conduct a trial in a neutral, unbiased manner. A fair and impartial trial by jury demands, after all, the display of impartiality on the part of the trial judge. *Wigfall*, 160 Mich App at 773. Because the trial court's questioning of defendant's expert witness evidenced partiality that almost certainly influenced the jury to defendant's detriment, thereby denying defendant a fair trial, I would reverse defendant's convictions and remand for a new trial.

/s/ Deborah A. Servitto